SBCivil Writ Petition No.4488/2004

Abdul Gafar Khan
Vs.
RSRTC, Jaipur & Ors.

Date of Order :: 13th October, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Devilal R.Vyas, for the petitioner.
Mr. Sangeet Lodha, for the respondents.

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The petitioner was subjected to a disciplinary proceeding under a charge sheet dated 2.12.1991 issued by Chief Manager, Rajasthan State Road Transport Corporation, Phalodi Depot, Phalodi for the allegations, that read as under:-

"1-कार्याशाला प्रभारी रा.रा.प.प.निगम फलोदी।	आपकी डयुटी दिनांक 10-6-91 को 1.30 बजे वाहन सं0 आरएनपी-3139 फलोदी बीकानेर मार्ग पर थी। उक्त दिनांक को आप द्वारा वाहन तेज गति से चलाने एवं वाहन संचालन में लापरवाही बरतने के कारण करीब 6.30-7.00 बजे गजनेर फॉटा के पास बीकानेर की तरफ से आ रही प्राईवेट ट्रक नं0 आरआरएन 2289 से टकरा जाने से प्राणघातक दुर्घटना धटित हुई जिससे निम्न प्रकार से क्षति हुई- 1- तीन व्यक्तियों की मृत्यु हो गई। 2- तीन व्यक्ति गम्भीर रूप से घायल हुए । 3- चार व्यक्ति घायल हुए व अन्य कई यात्रियों को चोट । 4-वाहन निम्न प्रकार से क्षतिग्रस्त पाई गई अ- आगे का सेफ क्षतिग्रस्त ब- आगे के दोनों बडे शीशे क्षतिग्रस्त स- परिचालक साईज के दो खिडकियों के शीशे क्षतिग्रस्त क- चैसिस बेन्ड ख- अन्दर की दो शीटे क्षतिग्रस्त ग- रेडियेटर क्षतिग्रस्त ध- रेडियेटर फेन क्षतिग्रस्त ड- रेडियेटर फाउन्टेशन क्षतिग्रस्त च- आगे इंजिन माउटिंग क्षतिग्रस्त आदि।

यदि आप सतर्कता बरतते हुए वाहन का संचालन करते तो उक्त दुर्धटना धटित नहीं होती किन्तु आप द्वारा वाहन संचालन में लापरवाही बरतने के कारण दुर्धटना धटित हुई एवं निगम को लगभग 30,000/- रूपये / तीस हजार रूपये मात्र / की आर्थिक हानि हुई है।

उक्त दोष निगम के स्थाई आदेश की धारा 34 रा.रा.प.प.नि. कर्मचारी एवं कार्यशाला के स्थायी आदेशों के अन्तर्गत आते हैं। अत: आप 7 दिवस में प्रकट करे कि क्यों न आपके विरूद्ध अनुशासनात्मक कार्यवाही की जावें ? निर्धारित अवधि में आपका उत्तर प्राप्त न होने पर एक तरफा कार्यवाही अमल में लाई जावेंगी।"

The inquiry officer after holding regular inquiry exonerated the petitioner from the allegation that he was driving the vehicle with rash and negligence, however, he found the petitioner guilty for not remaining vigilant while driving the bus. On basis of the inquiry report and the record submitted alongwith report of the inquiry the disciplinary authority by an order dated 22.3.2003 imposed a penalty of withholding of three annual grade increments with cumulative effect, recovery of a sum of Rs.30,000/- against the loss caused to the Corporation and forfeiture of pay pertaining to the period of suspension except the subsistence allowance already paid to the petitioner. Being aggrieved by the order dated 22.3.2003 the petitioner preferred an appeal before the Executive Director (Mechanical) Rajasthan State Road Transport Corporation, Jaipur giving challenge to the order aforesaid and that appeal came to be rejected by an order dated 21.7.2004, hence this petition for writ is preferred.

A challenge is given to the order passed by the disciplinary authority as well as by the appellate authority on the ground that the inquiry officer exonerated the petitioner from the allegations charged but the disciplinary authority without making any note of disagreement penalised the petitioner with a major punishment. It is also contended by counsel for the petitioner while giving challenge to the orders impugned that payment of compensation is a vicarious liability of the Corporation and that cannot be imposed upon the delinquent employee and as such the recovery ordered to be made in a tune of Rs.30,000/- is illegal.

A reply to the writ petition is filed on behalf of the respondents stating therein that whatever action taken against the petitioner is consequent to a fair inquiry and the inquiry officer found the petitioner guilty for the charge levelled against him to the extent that the petitioner was not vigilant in driving the bus and that caused a loss to the Corporation.

Heard counsel for the parties.

The first contention of counsel for the petitioner is that the inquiry officer exonerated the petitioner from the allegation levelled under the charge sheet dated 2.12.1991, therefore, there was no

occasion for the disciplinary authority to impose a penalty upon the petitioner while concurring the findings given by the inquiry officer.

I have minutely examined the report of the inquiry officer from perusal of that it is apparent that the petitioner was not exonerated from the complete charge. The allegation levelled against the petitioner under the charge sheet dated 2.12.1991 is in two parts, one is that the petitioner was rash and negligent and that caused an accident, and the second one is that the petitioner was not vigilant enough in driving the bus as a consequent thereto the Corporation suffered a loss of Rs.30,000/-. It is true that the inquiry officer exonerated the petitioner from first part of the allegation, however, the petitioner is found guilty for second part of the allegation that he was not vigilant enough while driving the bus and that caused a loss in a tune of Rs.30,000/- to the Corporation. In view of it the contention of counsel for the petitioner that the disciplinary authority erred while imposing a penalty upon the petitioner while concurring the finding given by the inquiry officer who exonerated the petitioner is not factually correct. The disciplinary authority accepted the finding of the inquiry officer to the effect that the petitioner was not vigilant while driving the bus and that caused a loss in a tune of Rs.30,000/- to the Corporation. In view of it I do not

find any illegality in the order impugned on the count referred above.

The another contention of counsel for the petitioner is also of no merit as the recovery of the sum of Rs.30,000/- is not ordered against the compensation for that Corporation is having a vicarious liability. The recovery is said to be ordered against the loss caused to the Corporation by damage of bus driven by the petitioner. In view of it the reliance placed by counsel for the petitioner upon a judgment of this Court in the case of Jaswant Singh v. State of Rajasthan & Ors., reported in 2004(2) RLW 738, is having no application. In the case aforesaid this Court held that the vehicle owner cannot escape his vicarious liability for making payment of compensation to the persons injured. In the present case as stated earlier the recovery sought to be made under the order impugned is not against the compensation but is for the loss caused to the Corporation.

In totality, this petition for writ fails for the reasons mentioned above and the same, therefore, is dismissed.

(GOVIND MATHUR),J.

kkm/ps.